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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 10/720,959  | 11/24/2003  | Terry Leseberg       | L541.12-0001                | 5204             |
| 164   | 7590        | 06/27/2005           |                             |                  |
| KINNEY & LANGE, P.A.<br>THE KINNEY & LANGE BUILDING<br>312 SOUTH THIRD STREET<br>MINNEAPOLIS, MN 55415-1002 |             |                      | EXAMINER<br>SELF, SHELLEY M |                  |
|   |             |                      | ART UNIT<br>3725            | PAPER NUMBER     |

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/720,959             | LESEBERG, TERRY     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Shelley Self           | 3725                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 and 12-14 is/are rejected.
- 7) Claim(s) 11 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 November 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/24/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “74” has been used to designate both *bolt* (pg. 7, lines 13, 14) and *spacers* (pg. 7, lines 20, 21); additionally reference character “76” has been used to designate both *spacers* (pg. 7, line 14) and *fasteners* (pg. 7, line 21).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 96, 102, 146, 158a, 158b, 160a, 160b & 162.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the *first and second linking braces* (clm. 13) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the examiner does not

accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Specification*

The disclosure is objected to because of the following informalities:

-Page 7, line 8, “a guide 68” should be –**a guide 68**—

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 1, 2, 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 1, it is unclear what is meant by “shear attached to the shear”. Clarification is required.

With regard to claim 11, the claim is confusing. For example, the prior parent claim(s) 3 and 4 positively define the means for actuating to comprise a hydraulic cylinder, thus it is unclear how “the first linking member is pivotally fastened to the...blade...and pivotally connected to the hydraulic cylinder of the means for actuating...” (clm. 11, lines 2-5). Clarification is required.

With regard to claim 13, “the distal end” does not have adequate antecedent basis within the claim. For example, the first frame members, front grill, first and second linking braces each

have a proximal or proximate end as well as a distal end. Examiner suggests, --*the distal end of the first linking brace*— and... --*the distal end of the second linking brace*--. No art has been applied to claim 13, however the claim is not deemed allowable and clarification is necessary to facilitate a clear understanding of the claim and proper application of the prior art.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Coughran, Jr. (3,572,411). With regard to claim 1 as best as can be understood, and claims 3, 4, 12 and 14, Coughran discloses a shear for mounting to an all-terrain vehicle (10) comprising: a frame (fig. 4) for connection to a support structure/front grill of the all-terrain vehicle, the frame comprising: a first frame member (12, 60, 62) for connection to the all terrain vehicle; and a second frame member (16) pivotally connected (14) to the first frame member and extending forward relative the all-terrain vehicle; the second frame member being transverse to the first frame member (fig. 4; see element 16); a shear/means for cutting vegetation (20) attached to the second frame member; and a hydraulic system (26,28,132,134,162) for actuating the shear (attached to the means for cutting, 20) attached to the second frame member, the hydraulic system being mounted to the all-terrain vehicle (col. 4, lines 55-58).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coughran, Jr. (3,572,411) in view of Emery (5,174,098). With regard to claims 2, 5, and 6, Coughran discloses a single power source and control system (col. 4, lines 55-58). Coughran does not disclose a power source separate than that which powers the all-terrain vehicle; or a hydraulic pump. Emery teaches in a similar art a vehicle apparatus for cutting/severing vegetation/tree. Emery teaches the use of plural power sources (col. 3, lines 14-15). Emery teaches a power source to power the vehicle and a second power source (30, 64) to power the cutting means for cutting vegetation (col. 3, lines 15-20). Additionally, Emery teaches the secondary power source (30) to be directly connected to a hydraulic pump (122, 124) for supplying hydraulic fluid via hydraulic lines (130, 132, 134) to the cutting/severing apparatus (col. 4, lines 5-17). Further Emery teaches a control system having valves and switches for controlling the hydraulic system (col. 4, lines 33-67 to col. 5, lines 1-67). Emery teaches that the use of a single power source to power a vehicle and a cutting apparatus may result in reduced or less than a predetermined amount of power supplied to the cutting assembly (col. 1, lines 49-53). Therefore, Emery teaches the use of separate power sources for powering the vehicle and the cutting assembly so as to deliver a predetermined amount of power to a cutting means (col. 2, lines 11-13) so as to efficiently cut/sever vegetation/tree. Because the references are from a

Art Unit: 3725

similar art and deal with a similar problem, i.e. powering a vehicle and an associated means for cutting it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Coughran having a secondary, separate power source and hydraulic pump so as to supply a predetermined amount of power to the means for cutting for efficiently cutting/severing vegetation/tree as taught by Emery.

As to the recitation, the control system mounted proximate a seat of the all terrain vehicle (clm. 6), both Coughran and Emery teach a control system operable by an operator, (Coughran col. 4, lines 55-58; Emery col. 5, lines 57-62).

With regard to claim 7, Coughran discloses the first frame member (12,60,62) and the second frame member (16) connected by a supporting member (fig. 4).

With regard to claim 8, Coughran discloses the supporting member comprises a second hydraulic cylinder (26, 28) having a proximate end and a distal end, wherein the proximate end of the second hydraulic cylinder attaches to the first frame (12; fig. 4) and the distal end of the second hydraulic cylinder attaches to the second frame member (16; fig. 4; col. 3, lines 1-4); and wherein the second hydraulic cylinder connects to the hydraulic system.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coughran, Jr. (3,572,411) in view of Cornelius (4,683,924). Coughran does not disclose a first and second shear blade. Cornelius teaches the use of first and second shearing blades (61; fig. 6) having a blade end, wherein the blades are moveable relative to each other via actuating hydraulic cylinders (65). Additionally, Cornelius teaches the blades to be pivotally connected (64) to operate in a scissor fashion so as to completely cut/sever vegetation/tree (col. 6, lines 11-

Art Unit: 3725

18). Because the references are from a similar art and deal with a similar problem, i.e., cutting/severing vegetation/tree it would have been obvious at the time of the invention to one having ordinary skill in the art to replace Coughran's shearing blade (110, 112) with a pivotally attached shearing first and second blade so as to efficiently cut and/or sever vegetation as taught by Cornelius.

#### ***Allowable Subject Matter***

Claim 11 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if the 35 U.S.C. 112 rejections were overcome.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or fairly suggest a *first linking member pivotally fastened to the blade of the first blade member and pivotally connected to the hydraulic cylinder* and a *second linking member pivotally fastened to the lade end of the second blade member and pivotally connected to the hydraulic cylinder* in combination with the rest of the claimed limitations as set forth in claim 11.

The prior art reference, Cornelius discloses an apparatus for cutting vegetation wherein a first and second blade are pivotally connected (See figure 4) via a pivot connection (64). Additionally Cornelius discloses the two pivotally connected blades to be actuated via two corresponding hydraulic cylinders (See Figure 6) such that as the hydraulic cylinders operate the blades are moved into a closed and open position to sever or cut vegetation. Cornelius does not disclose any first or second linking members and instead discloses the blades to be directly

Art Unit: 3725

connected to each other and independently connected to a hydraulic cylinder, thus resulting in a hydraulic cylinder associated with each cutting blade. Accordingly, Cornelius fails to anticipate or render obvious the claimed invention as set forth in claim 11.

Neither the prior art of record nor any combination thereof discloses the claimed invention as set forth in claim 11. Thus claim 11 appears to contain allowable subject matter over the prior art of record.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf  
June 22, 2005



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